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CITY CLERK

GENERAL ORDINANCE NO. 2, 2009

AN ORDINANCE AMENDING *TERRE HAUTE CITY CODE* CHAPTER 7, ARTICLE 2, TO CREATE A "CITY OF TERRE HAUTE RESPONSIBLE BIDDER ORDINANCE."

WHEREAS, the City of Terre Haute expends substantial funds for public works construction and maintenance, a portion of that money being derived from taxes paid by residents;

WHEREAS, the City of Terre Haute seeks to preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded City contracts;

WHEREAS, the City of Terre Haute endeavors to identify the lowest responsible bidder on all City contracts;

WHEREAS, the City of Terre Haute is entitled to state the specific requirements of City contracts and to establish criteria bidders must satisfy to be considered for City contracts;

WHEREAS, the "City of Terre Haute Responsible Bidder Ordinance" will assure efficient use of taxpayer dollars and will promote public safety.

NOW, THEREFORE, BE IT HEREBY ORDAINED by the Common Council of the City of Terre Haute, Indiana, that:

Section 1. *Terre Haute City Code* Chapter 7, Article 2 is hereby amended by insertion of the following text:

Sec.7-80 Purpose.

The Responsible Bidder Ordinance shall serve to define the term "responsible" as used in Indiana Code § 36-1-12-4, regarding competitive bidding.

Sec. 7-81 Applicability.

This Article of the *Terre Haute City Code* shall apply when:

a. The City is seeking a contract or service to perform public work. Public work, in this context, means the construction, reconstruction, alteration, or renovation of a public building, or other structure that is paid for out of a public fund or out of a special assessment. The term includes the construction, alteration, or repair of a highway, street, alley, bridge, sewer, drain, or other improvement that is paid for out of a public fund or out of a special assessment. The term also includes any public work leased by the City under a lease containing an option to purchase; and

b. The cost of the contract or service will be at least one-hundred fifty thousand dollars (\$150,000).

Sec. 7-82 Criteria.

A "responsible bidder" shall meet all the bid and contract specifications, and shall:

a. Affirm compliance with all applicable laws pre-requisite to doing business in Indiana;

b. Produce evidence of a federal employer taxpayer identification number or social security number (for sole proprietors);

c. Conform compliance with Section 2000(e) of Chapter 21, Title 42 of the United State Code and Federal Executive Order No. 11375 (known as the Equal Opportunity Employer Provisions);

d. Provide the City with certificates of insurance indicating the following coverage, when such is required in the bid or contract specifications, and in amounts stated in the bid specifications or contract:

- (1) General liability;
- (2) Worker's compensation;
- (3) Completed operations;
- (4) Automobile;
- (5) Hazardous occupation;
- (6) Product liability;
- (7) Professional liability;
- (8) Pollution liability;
- (9) Asbestos abatement liability;
- (10) Property insurance; and
- (11) Any additional insurance required by the bid specifications or contract;

e. Affirm, where worker's compensation insurance is required under the bid specifications, that all employees are (1) covered under a current worker's compensation insurance policy and (2) properly classified under such policy; and also, where worker's compensation insurance is required under the bid specification, submit a copy of the "Declarations Page(s)" of the contractor's worker's compensation insurance policy if the contractor is insured with a carrier, and any continuation of the worker's compensation insurance Declarations Page(s) which includes the name and address of the insured, as well as the class codes the compensation premium is based on and the total estimated remuneration per class code; and, upon the City's request, submit a copy of any worker's compensation insurance annual premium audit documents.

f. Indicate compliance with Indiana Code § 5-16-7 *et seq.*, the Indiana Common Construction Wage Act;

g. Submit proof of any professional or trade license required by law for any trade or specialty area in which a bidder is seeking a contract award; and disclose any suspension or revocation within the previous five (5) years of any professional trade license held by the company, or of any director, officer, or manager employed by bidder;

h. At the time of submitting the bid, disclose the name and address of each subcontractor from whom the bidder has accepted a bid and/or intends to hire on any part of the project, and disclose the amount of each subcontractor's bid to the general contractor; each subcontractor who will perform work valued in excess of the threshold set forth in Section 7-81 b. of this Article shall be required to adhere to the submission requirements set forth herein as though it were bidding directly to the City of Terre Haute, and must file the appropriate required documents at least five (5) days prior to commencement of work by the subcontractor;

i. State that individuals who will perform work on the public works project on behalf on the contractor are properly classified as either (1) an employee or (2) an independent contractor under all applicable state and federal laws and local ordinances;

j. Provide information as to the substance abuse policy that pertains to all of the bidder's employees working on the project; and

k. Confirms that all apprentices to be used on the project are registered with an apprenticeship and training program approved and registered with the United States Department of Labor, Bureau of Apprenticeship and Training (or any state or federal successor agency).

Sec. 7-83 Certified Payroll.

All contractors and subcontractors are required to submit to the awarding agency, and General Contractor if applicable, an approved and detailed certified payroll on a weekly basis, unless different payroll reporting requirements are stated under the bid specifications or contract.

Sec. 7-84 Additional Criteria.

The City may also request evidence of and/or consider the following factors when identifying responsible bidders for the purpose of awarding contracts under this Article:

a. The ability, capacity, and skill of the bidder to perform the contract;

b. The capacity of the bidder to perform the contract promptly and efficiently, or within the time specified, without delay or interference;

c. The character, integrity, reputation, and experience of the bidder;

- d. The quality of the bidder's past performance, including performance of previous contracts, whether or not such performance was with the City;
- e. The bidder's default under previous contracts, whether or not such contract was with the City;
- f. The bidder's failure to pay or satisfactorily settle bills due on former contracts, whether or not such contract was with the City;
- g. The previous and existing compliance by the bidder with laws and ordinances relating to the contract;
- h. The financial ability of the bidder to perform the contract;
- i. A statement regarding and/or disclosure of:
 - 1. Any determination by a court or government agency for violations of federal, state or local laws including but not limited to violations of contracting or antitrust laws, tax or licensing laws, environmental laws, the Occupational Safety and Health Act (OSHA), the National Labor Relations Act (NLRA), Common Construction Wage Law, or the federal Davis-Bacon Act;
 - 2. Any findings of "non-responsibility" by federal, state, or local departments;
- j. Any additional factors the City determines relevant for the contract.

Sec. 7-84 Lowest Bidder Not Chosen.

When a contract is awarded to a bidder other than the lowest bidder, a statement of the reasons for such award shall be prepared by the City board or entity awarding the contract.

Sec. 7-85 Multiple Low Bids.

When two (2) or more responsible bidders submit the same low bid, the contract shall be granted to the bidder whose headquarters are geographically closest to the City of Terre Haute's corporation boundary; but if both low bidders are headquartered within the City of Terre Haute's corporation boundary, then the winning bid shall be determined by drawing lots in public at a meeting of the Board of Public Works & Safety.

Sec. 7-86 Access to Public Records Act.

All submissions tendered under this Article by a contractor or sub-contractor shall be public records subject to review pursuant to Indiana Code § 5-14-3-1 *et seq.*, the Indiana Access to Public Records Law.

Section 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 3. If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

Section 4. This ordinance shall be in full force and effect from and after its passage by the Common Council of Terre Haute, Indiana and approval of the Mayor and publication as required by law.

Introduced by: _____ Norman Loudermilk, Councilman

Passed in open Council this _____ day of _____, 2010.

_____ Neil Garrison, President

ATTEST: _____ Charles P. Hanley, City Clerk

Presented by me to the Mayor this _____ day of _____, 2010.

_____ Charles P. Hanley, City Clerk

Approved by me, the Mayor, this _____ day of _____, 2010.

_____ Duke A. Bennett, Mayor

ATTEST: _____ Charles P. Hanley, City Clerk